

Introduced by: Councilmember Austin-Lane

First Reading:

July 17, 2006

Second Reading:

July 24, 2006

Effective Date:

August 14, 2006

## **CITY OF TAKOMA PARK, MARYLAND**

### **ORDINANCE NO. 2006-30**

**Adopting certain articles of Chapter 19, Erosion, Sediment Control and Storm Water Management, of the *Montgomery County Code* and authorizing the City Manager to enter into an a Memorandum of Understanding with Montgomery County to administer and enforce the provisions of Chapter 19, Article IV, Water Quality Control, relating to illicit discharge detection and elimination and pollution prevention, in the City of Takoma Park.**

**WHEREAS**, the National Pollutant Discharge Elimination System (NPDES) Phase II stormwater requirements provide that small municipalities with stormwater management authority, such as the City of Takoma Park, must obtain NPDES permit coverage under the Federal Clean Water Act; and

**WHEREAS**, the City is covered under the Maryland Department of the Environment (“MDE”), General Permit No. 03-1M-5500 for Discharges from Small Municipal Separate Storm Sewer Systems; and

**WHEREAS**, pursuant to the NPDES Phase II stormwater requirements, the City is required to develop and implement specific minimum control measures, including a program to identify and eliminate any illegal storm drain system connections and illicit discharges into the storm drain system and the waters in the City, address illegal dumping and spills, and enforce penalties where appropriate; and

**WHEREAS**, the City does not have the resources to develop and carry out its own illicit discharge detection and elimination program, including enforcing water quality violations; and

**WHEREAS**, the City has been notifying MDE in the event of illicit discharges or water quality incidents in the City and relying upon MDE to investigate such incidents and take appropriate enforcement action; and

**WHEREAS**, Montgomery County, through its Department of Environmental Protection, is willing and able to investigate spills and illicit discharges through the City’s storm sewer system and other water quality incidents in the waters of the City and to take enforcement action against violators, as required; and

**WHEREAS**, in order for Montgomery County to exercise authority over illicit discharge detection and elimination and enforcement of water quality violations in the City, the City needs to expressly adopt certain articles of Chapter 19 of the *Montgomery County Code* and enter into a

written agreement for the County to exercise, in the City of Takoma Park, the powers the County carries out elsewhere in the County under *Montgomery County Code*, Chapter 19, Article IV (Water Quality Control) and Article VI (General), to control illicit discharges and water pollution; and

**WHEREAS**, on May 22, 2006, the Council adopted a Resolution of Intent to Enter the National Flood Insurance Program which will allow property owners in the City to purchase federally-guaranteed flood insurance and be eligible for disaster relief; and

**WHEREAS**, one of the requirements for the City to participate in the National Flood Insurance Program is that the City document that Chapter 19, Article III (Flood Plain District Requirements) of the *Montgomery County Code* applies in the City; and

**WHEREAS**, by Section 1 of this Ordinance, the City is adopting all of *Montgomery County Code*, Chapter 19 except Article II (Stormwater Management) and Article V (Water Quality Review in Special Protection Areas).

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND.**

**SECTION 1. Applicability of *Montgomery County Code*, Chapter 19 in the City of Takoma Park.**

A. *Montgomery County Code*, Chapter 19 (Erosion, Sediment Control, and Storm Water Management), Article I (Erosion and Sediment Control), Article III (Floodplain District Requirements), Article IV (Water Quality Control), and Article VI (General) shall apply in the City of Takoma Park.

B. *Montgomery County Code*, Chapter 19 (Erosion, Sediment Control, and Storm Water Management), Article II (Stormwater Management) does not apply in the City of Takoma Park and no authority is granted to Montgomery County by this Ordinance over stormwater management in the City.

C. *Montgomery County Code*, Chapter 19 (Erosion, Sediment Control, and Storm Water Management), Article V (Water Quality Review in Special Protection Areas) applies only to geographic areas which have been designated by the County Council as a “special protection area.” As there are no special protection areas in the City, Chapter 19, Article V does not apply in the City of Takoma Park and the City hereby exempts itself from its provisions.

**SECTION 2. Authorizing Montgomery County to administer and enforce the *Montgomery County Code*, Chapter 19, Article IV (Water Quality Control) and Article VI (General) for the purpose of controlling illicit discharges and pollution in the waters in the City.**

A. The City of Takoma Park requests and authorizes Montgomery County to administer and enforce the requirements of *Montgomery County Code*, Chapter 19, Article IV (Water Quality Control) and Article VI (General) for the purpose of controlling illicit discharges and pollution in the waters in the City.

B. The City Manager is hereby authorized to negotiate the terms of and to execute a Memorandum of Understanding with Montgomery County providing for the County to administer and enforce the requirements of *Montgomery County Code*, Chapter 19, Article IV (Water Quality Control) and Article VI (General) in the City of Takoma Park. The provisions of such Memorandum of Understanding shall be substantially as set forth on the Memorandum of Understanding between Montgomery County, Maryland, and the City of Takoma Park, Maryland, which is attached to this Ordinance and made a part of it.

**Adopted this 24th day of July, 2006, by roll-call vote as follows:**

<b>Aye:</b>	Porter, Clay, Elrich, Seamens, Williams
<b>Nay:</b>	None
<b>Absent:</b>	Austin-Lane, Barry
<b>Abstain:</b>	None

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**MONTGOMERY COUNTY, MARYLAND**  
**and the**  
**CITY OF TAKOMA PARK, MARYLAND**

**THIS MEMORANDUM OF UNDERSTANDING** (“Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, 2006, is by and between the City of Takoma Park, Maryland (“City”), a municipal corporation organized under the laws of the State of Maryland, and Montgomery County, Maryland (“County”), a body corporate and politic and local subdivision of the State of Maryland. The City and the County are hereinafter referred to collectively as the “Parties.” This Agreement sets forth the Parties’ agreement regarding the exercise of County authority to perform illicit discharge detection and elimination and certain other water pollution prevention activities within the City.

**Section 1. Purpose.**

This Agreement provides for the County to enforce the provisions of *Montgomery County Code*, Chapter 19 (Erosion, Sediment Control and Storm Water Management), Article IV (Water Quality Control) and Article VI (General) in the City. County enforcement of these provisions in the City will allow the City to comply with the minimum control measures required under Phase II of the National Pollutant Discharge Elimination System (NPDES) stormwater program. The City of Takoma Park is covered under Maryland Department of the Environment, General Permit No. 03-1M-5500 for Discharges from Small Municipal Separate Storm Sewer Systems.

**Section 2. Authority.**

**a.** By *Md. Ann. Code*, Art. 29, § 3-202, effective July 1, 1990, authority for stormwater management in the City was transferred from the Washington Suburban Sanitary Commission to the City, and the County was prohibited from exercising any rights, powers or duties relating to stormwater management in the City, unless the City and the County otherwise agreed.

**b.** This Agreement sets forth the agreement between the City and the County to have the County exercise in the City of Takoma Park the powers the County carries out elsewhere in the County, pursuant to *Montgomery County Code*, Chapter 19, Articles IV and VI, to control illicit discharges and pollution in the waters of the state in the County.

**c.** Nothing in this Agreement affects or limits the City’s rights, powers, and duties relating to stormwater management within its corporate boundaries, as provided by *Md. Ann. Code* Article 29, Title 3, Subtitle 2, *Md. Code Ann.*, Environment Article, Title 4, Subtitle 2 (Stormwater Management), and Title 16, Chapters 16.04 (Stormwater Management) and 16.08 (Stormwater Management Fee System) of the *Takoma Park Code*. The Parties agree that Chapter 19, Article II (Stormwater Management) of the *Montgomery County Code* does not apply in the City and no authority is granted to the County by this Agreement over stormwater management in the City.

**Section 3. Code Enforcement.**

a. The County is hereby authorized to administer and enforce *Montgomery County Code*, Chapter 19, Articles IV and VI, within the City of Takoma Park.

b. The County's enforcement authority under *Montgomery County Code*, Chapter 19, Articles IV and VI includes, but is not limited to, the inspection, investigation, and monitoring of discharges of pollutants in a location where they are likely to pollute waters of the state in the City; issuance of notices of violation, stop work orders, and/or corrective orders to any person causing or permitting the violation; requiring violators to submit a plan for compliance; issuing municipal infraction citations; and seeking injunctive or other appropriate judicial relief to prevent or stop violations.

c. The Montgomery County Office of the County Attorney will enforce and prosecute all orders and municipal infraction citations issued by the County and will seek injunctive or other appropriate judicial relief to prevent or stop violations occurring within the City, in accordance with the provisions of this Agreement and *Montgomery County Code*, Chapter 19, Articles IV and VI.

#### **Section 4. Coordination and Notice of Enforcement Actions.**

a. The City, through its Department of Public Works, will promptly notify the Montgomery County Department of Environmental Protection (DEP) whenever it observes or receives notice or a complaint of a violation or potential violation of *Montgomery County Code*, Chapter 19, Articles IV and VI. Such notification may be made by telephone, e-mail, fax, or by U.S. mail, as the parties deem appropriate depending upon the nature and seriousness of the violation or potential violation.

b. The County agrees to inform the City, through the City's Department of Public Works, of all activities related to the administration and enforcement of *Montgomery County Code*, Chapter 19, Articles IV and VI within the City that are performed by DEP or the Office of the County Attorney. Such notification and information may be made by telephone, e-mail, fax, or by U.S. mail, as the parties deem appropriate depending upon the nature and seriousness of the violation or potential violation.

#### **Section 5. Indemnification.**

Each party agrees to indemnify and hold harmless the other party for any claims that arise solely from the other party's acts, omissions or negligence in the performance of this Agreement. This indemnification is subject to the liability and damages caps stated in the Local Government Tort Claims Act, *Md. Code Ann.*, Cts. & Jud. Proc. §§ 5-301 *et seq.*, as amended from time to time. This indemnification is not intended to be a waiver of governmental immunity by either the County or the City, and is not intended to create any rights or causes of action in third parties. The County will not be liable for any damages or injury occasioned by the acts, omissions or negligence of the City, its agents or employees, or by failure to comply with its obligations under this Agreement and the City will not be liable for any damages or injury occasioned by the acts, omissions or negligence of the County, its agents or employees, or by failure to comply with its obligations under this Agreement.

## **Section 6. Notices.**

Except in emergencies, notices or complaints of violations or potential violations of *Montgomery County Code*, Chapter 19, Articles IV and VI, which may be made by telephone, any reports, notices or other communications under this Agreement will be in writing and personally delivered, mailed by first-class mail, sent by courier or overnight delivery service, faxed or e-mailed, as appropriate, as follows:

If to the County:       Montgomery County Department of Environmental Protection  
                                Attn: Steve Martin  
                                255 Rockville Pike, Suite 120  
                                Rockville, MD 20850  
                                Phone: 240-777-7700  
                                Fax: 240-777-7752  
                                E-Mail: [steve.martin@montgomerycountymd.gov](mailto:steve.martin@montgomerycountymd.gov)

If to the City:         Daryl Braithwaite, Public Works Director  
                                City of Takoma Park Department of Public Works  
                                31 Oswego Avenue  
                                Silver Spring, MD 20912  
                                Phone: (301) 891-7615  
                                Fax:   (301) 585-2405  
                                E-Mail: [DarylB@takomagov.org](mailto:DarylB@takomagov.org)

Either party may change the person, address, phone, fax or e-mail for notices to the other party by a notice in writing to the other. Any notice under this Agreement will be deemed given when it is received by the other party or, for notices given by mail, three days after the notice is deposited, properly addressed, and postage prepaid, in the United States mail.

## **Section 7. Term of Agreement and Termination.**

**a.**       This Agreement becomes effective upon execution by all parties and will remain in effect for a period of one year. The Agreement will be automatically renewed for additional one year terms unless terminated by either party in accordance with subsection b. of this Section 7.

**b.**       Either the City or the County may terminate this Agreement at any time upon ninety (90) days written notice to the other party.

## **Section 8. Miscellaneous.**

**a.       Entire Agreement.** This Agreement contains the final and entire understanding of the parties with respect to the subject matter of this Agreement.

**b. Assignability.** This Agreement and any rights or obligations hereunder may not be assigned, transferred or subcontracted by either party without the prior written consent of the other party.

**c. Amendments or Modifications to be in Writing.** This Agreement may only be amended or modified by a writing signed by both parties.

**d. Binding Effect.** This Agreement is binding upon the parties and will inure to the benefit of their successors and assigns.

**IN WITNESS WHEREOF**, the Parties have executed this Memorandum of Understanding as of the day and year first above written.

**For City of Takoma Park, Maryland:**

CITY OF TAKOMA PARK, MARYLAND  
Takoma Park Community Center  
7500 Maple Avenue  
Takoma Park, MD 20912

BY: \_\_\_\_\_  
Barbara B. Matthews, City Manager

Date: \_\_\_\_\_

Approved as to form and legal sufficiency  
by Takoma Park City Attorney:

BY: \_\_\_\_\_  
Linda S. Perlman, Assistant City Attorney

Date: \_\_\_\_\_

**For Montgomery County, Maryland:**

MONTGOMERY COUNTY, MARYLAND  
Executive Office Building  
101 Monroe Street  
Rockville, MD 20850-2540

BY: \_\_\_\_\_  
Bruce Romer, Chief Administrative Officer

Date: \_\_\_\_\_

Approval Recommended:

BY: \_\_\_\_\_  
James Caldwell, Director  
Department of Environmental Protection

Date: \_\_\_\_\_

Approved as to form and legal sufficiency  
by the Office of the County Attorney:

BY: \_\_\_\_\_  
Walter E. Wilson, Associate County Attorney

Date: \_\_\_\_\_